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Paper No. 21

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DEC 18 2002

Director's Office
Office of Patent Publication

In re Application of :
Lara Linda Elsberg, et al. : **DECISION ON PETITION**
Application No. 09/465,853 :
Filed: December 17, 1999 :
Attorney Docket No. 15497 :

This is a decision on the Request for Withdrawal of Abandonment, received via facsimile transmission on July 9, 2002, which is being treated as a Petition to Withdraw the Holding of Abandonment Under 37 CFR 1.181 (a), for the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition for Withdrawal of Holding of Abandonment."

This application was held abandoned for failure to pay the issue fee on or before the due date of December 19, 2001.

As evidence of the timely submission of the Issue Fee, petitioner has submitted a copy of the Issue Fee Transmittal, with a Certificate of Mailing dated November 6, 2001, and a statement attesting to the timely filing of the Issue Fee on November 6, 2001.

The PTO acknowledges receipt of the Issue Fee Transmittal on January 9, 2002. Unfortunately, when an attempt was made by the Office of Finance to charge the fees on January 15, 2002, the fees were not recorded due to insufficient funds in Deposit Account No. 11-0875. The petitioner therefore has not complied with 37 CFR 1.25(b), which states in part:

... An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee.

In light of the non-compliance with 37 CFR 1.25(b), the holding of abandonment cannot at this time be withdrawn.

The petitioner should consider petitioning the Commissioner as follows:

File a petition for Revival of Abandoned Application or Lapsed Patent under CFR § 1.137 (a) or (b). The new rule change appears in 62 Federal Regulations, October 10, 1997 or (a) 1203 of the Official Gazette 63, October 21, 1997.

- Under 37 CFR 1.137(a), a petition for the revival of an *unavoidably* abandoned application must include the following:

- (1) The reply required to the outstanding Office action or notice, unless previously filed.
- (2) The petition fee set forth in § 1.17(l);
- (3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (d) of this section.

With respect to an application filed before June 8, 1995, any petition under § 1.137(a) that is filed more than six months after the abandonment date must—according to § 1.137(c)—be accompanied by a terminal disclaimer with disclaimer fee.

- Under 37 CFR 1.137(a), a petition for the revival of an *unintentionally* abandoned application must include the following:

- (1) The reply required to the outstanding Office action or notice, unless previously filed.
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (d) of this section.

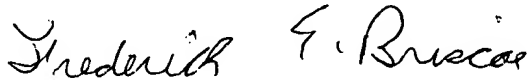
Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, DC 20231

By facsimile: 703-308-6916
Attn.: Office of Petitions

By hand: Crystal Plaza Four, Rm. 3C23
2201 South Park Place
Arlington, VA

Telephone inquiries concerning this matter may be directed to the Office of Petitions at 703-305-9282.



Frederick E. Briscoe
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